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2007 FEB -2 P 4: 33

AZ CORP COMMISSION
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Attorneys for Intervenor IBEW Local 1116

BEFORE THE ARIZONA

CORPORATION COMMISSION

IN THE MATTER OF THE FILING BY
TUCSON ELECTRIC POWER COMPANY
TO AMEND DECISION NO. 62013

Docket No. E-01933A-05-0650

SURREBUTTAL TESTIMONY OF
RYLE J. CARL III

Pursuant to the Administrative Law Judge's Procedural Order
(p. 2) dated November 1, 2006, Local Union 1116, International
Brotherhood of Electrical Workers, AFL-CIO, CLC ("IBEW Local
1116"), by and through undersigned counsel, hereby provides
notice of its filing of the attached Surrebuttal Testimony of
Ryle J. Carl III in this docket.

RESPECTFULLY SUBMITTED this 2nd day of February, 2007.

LUBIN & ENOCH, P.C.

Janet J. Haskovec

Jarrett J. Haskovec, Esq.
Attorney for Intervenor IBEW Local 1116

Original and thirteen (13) copies
of IBEW Local 1116's Notice filed
this 2nd day of February, 2007, with:

Arizona Corporation Commission
Docket Control Center
1200 West Washington Street
Phoenix, Arizona 85007-2996

Arizona Corporation Commission

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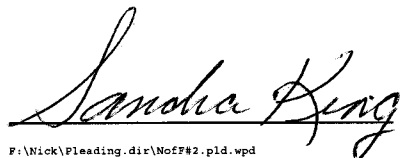
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1 Q1. Mr. Carl, have you reviewed the Rebuttal Testimony filed by
2 the Tucson Electric Power Company ("TEP") in this case?

3 A1. Yes, I have.

4 Q2. In his Rebuttal Testimony (pp. 3-4 & 6), Mr. Pignatelli
5 states that all of the Intervenor, including Local Union
6 1116, International Brotherhood of Electrical Workers, AFL-
7 CIO, CLC ("IBEW Local 1116"), "are trying to prevent TEP
8 from charging market-based rates for generation service in
9 2009[.]" Is Mr. Pignatelli's assertion correct?

10 A2. While I cannot speak for all of the other Intervenor in
11 this proceeding, I can say that Mr. Pignatelli has not
12 accurately stated the position of IBEW Local 1116 with
13 respect to this particular point. To be clear, IBEW Local
14 1116 has never sought, nor do we support any effort, to
15 prevent TEP from charging market-based rates for generation
16 service in 2009.

17 Q3. In his Rebuttal Testimony (p. 4), Mr. Pignatelli refers to
18 the "[o]pponents of electric competition and those who
19 warned of the risks associated with the transition,
20 including TEP[.]" Did (and does) IBEW Local 1116 share
21 TEP's general concerns in this regard?

22 A3. Yes. IBEW Local 1116 has, along with TEP, been a vocal
23 critic of the move towards so-called electric competition.

24 Q4. In his Rebuttal Testimony (p. 79), Mr. Pignatelli states
25 that "[a]pparently [you do] not recognize that the 1999
26 Settlement Agreement is a binding contract to which the
27 Commission is party." What is your reaction to Mr.
28 Pignatelli's comment?

1 A4. I respectfully disagree with Mr. Pignatelli's unwarranted
2 legal assertion that the 1999 Settlement Agreement is a
3 binding contract to which the Commission is party. Arizona
4 law, in particular A.R.S. § 40-252, very clearly states that
5 this Commission may at any time rescind, alter, or amend any
6 order or decision made by it, and that when the order making
7 such rescission, alteration, or amendment is served upon the
8 corporation affected, it is effective as an original order
9 or decision. Thus, it would appear that the Commission
10 itself has the ability to modify the terms of the 1999
11 Settlement Agreement provided, of course, it does so in a
12 manner consistent with its own rules and the principles of
13 due process.

14 Q5. In that same paragraph, Mr. Pignatelli "wonder[s] if [you]
15 would have the same reaction if companies began unilaterally
16 changing provisions in their contracts with IBEW Local
17 1116." What is your reaction to Mr. Pignatelli's comment?

18 A5. As I said in response to the previous question, A.R.S. § 40-
19 252 specifically authorizes the Commission to modify the
20 terms of the 1999 Settlement Agreement. By contrast, the
21 Labor Management Relations Act of 1947, 29 U.S.C. § 141, et
22 seq., specifically precludes unilateral changes in the terms
23 of collective bargaining agreements. That being the case,
24 and with all due respect to Mr. Pignatelli, his comparison
25 is, at best, seriously flawed.

26 Q6. In that same paragraph, Mr. Pignatelli "surmise[s] that
27 [you] filed [your] Direct Testimony for some purpose
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1 unrelated to this proceeding and the important matters at
2 issue." What is your reaction to Mr. Pignatelli's
3 supposition?

4 A6. My response is two-fold:

5 First, Mr. Pignatelli's supposition is simply wrong as a
6 factual matter.

7 Second, and even assuming *arguendo* Mr. Pignatelli's
8 supposition was correct - which it is not - it is unclear to
9 me of what consequence this fact would or should be to this
10 Commission. By its terms, the First Amendment protects "the
11 rights of people to petition the Government for a redress of
12 grievances." The United States Supreme Court has found that
13 efforts by Unions, such as IBEW Local 1116, to influence the
14 government are protected by both the constitutional right to
15 petition and by a right of access implicit in the
16 representative form of government. The Union's subjective
17 motivation for undertaking such an endeavor, however, should
18 be of no consequence to the government. As explained by the
19 United States Supreme Court in its 1961 decision in *Eastern*
20 *R.R. President's Conference v. Noerr Motor Freight, Inc.*,
21 365 U.S. 127, 139: "[t]he right of the people to inform
22 their representatives in government of their desires with
23 respect to the passage or enforcement of laws cannot
24 properly be made to depend upon their intent in doing so.
25 It is neither unusual nor illegal for people to seek action
26 on laws in the hope that they may bring about an advantage
27 to themselves and a disadvantage to their competitors."

1 Q7. In his Rebuttal Testimony (*id.*), Mr. Pignatelli states that
2 you "apparently overlook[] the fact that the Commission
3 lacks any information with which to set a fair rate of
4 return on the fair value of TEP's property in this
5 proceeding." What is your reaction to Mr. Pignatelli's
6 comment?

7 A7. I never meant to suggest in my Direct Testimony that this
8 rate-making procedure needed to be done "in this
9 proceeding," at least as it's presently constituted, or that
10 it should be done in a manner inconsistent with the rules of
11 this Commission and, more generally speaking, the principles
12 of due process. I agree with Mr. Pignatelli's assertion
13 that, at the present time, the Commission does not have
14 enough information upon which to set a fair rate of return
15 on the fair value of TEP's property. That being said, I
16 still believe that undertaking a rate case simply makes more
17 sense than the Commission and parties getting bogged down in
18 a lengthy discussion and debate regarding the present
19 viability of the 1999 Settlement and/or a prospective
20 interpretation of its current terms in the year 2009 and
21 beyond.

22 Q8. In his Rebuttal Testimony (p. 80), Mr. Pignatelli states
23 that TEP "determined there was no merit" to your claims
24 concerning reliability and safety. What is your reaction to
25 Mr. Pignatelli's comment?

26 A8. I am somewhat bewildered by it. Indeed, when one reads Mr.
27 Pyers's Rebuttal Testimony, one notices that TEP does not
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1 really seem to dispute the factual basis for many of my
2 observations.

3 Q9. In his Rebuttal Testimony (p. 3), Mr. Pyers takes issue with
4 your previous statement that TEP has "many" outstanding work
5 orders "related to safety." What is your reaction to Mr.
6 Pyers's comment?

7 A9. Mr. Pyers is quibbling with my use of the phrase "related to
8 safety." TEP's internal terminology notwithstanding, I
9 believe that it is self-evident that a backlog of several
10 hundred work orders for a utility is evidence of potential
11 safety-related problems.

12 Q10. In his Rebuttal Testimony (p. 5), Mr. Pyers mentions the
13 fact that your previous assertions concerning Unit 3 may
14 have been in error and that, instead, you should have
15 referred to the Unit 1 and 2 cooling towers. Is Mr. Pyers
16 correct?

17 A10. Yes.

18 Q11. In your Direct Testimony (p. 4) you made reference to the
19 "cross-subsidization" of UniSource Energy Corporation
20 ("UniSource"). What did you mean by this phrase?

21 A11. In this context, "cross-subsidization" means an
22 inappropriate and/or unjustified outflow of money from TEP
23 to its parent company, UniSource.

24 Q12. Does this conclude your Surrebuttal Testimony?

25 A12. Yes.

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